

ESTTA Tracking number: **ESTTA507167**

Filing date: **11/21/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Goya Foods, Inc.
Granted to Date of previous extension	11/21/2012
Address	100 Seaview Drive Secaucus, NJ 07094 UNITED STATES
Attorney information	Stephen L. Baker Baker and Rannells PA 575 Route 28 Raritan, NJ 08869 UNITED STATES officeactions@br-tmlaw.com, s.baker@br-tmlaw.com, r.mcgonigle@br-tmlaw.com, k.hnasko@br-tmlaw.com Phone:908-722-5640

Applicant Information

Application No	85430918	Publication date	07/24/2012
Opposition Filing Date	11/21/2012	Opposition Period Ends	11/21/2012
Applicant	MARQUEZ BROTHERS INTERNATIONAL, INC. 5801 Rue Ferrari San Jose, CA 95138 UNITED STATES		

Goods/Services Affected by Opposition

Class 029. All goods and services in the class are opposed, namely: Chorizo, longaniza, deli meats, namely, hams, turkey


Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2740494	Application Date	08/08/2002
Registration Date	07/22/2003	Foreign Priority Date	NONE
Word Mark	CASERA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1979/01/00 First Use In Commerce: 1990/01/08 processed vegetables

U.S. Registration No.	3040516	Application Date	06/14/2004
Registration Date	01/10/2006	Foreign Priority Date	NONE
Word Mark	CASERITA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1972/10/19 First Use In Commerce: 1972/10/19 Chicken Croquettes		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CASERITA		
Goods/Services	croquettes		

Attachments	78434903#TMSN.jpeg (1 page)(bytes) DOC035.pdf (6 pages)(39821 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ryan A. McGonigle/
Name	Ryan A. McGonigle
Date	11/21/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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Goya Foods, Inc.

Opp. No.

Opposer

Mark: CASERA

v.

Ser. No.: 85430918

MARQUEZ BROTHERS INTERNATIONAL, INC.,

Applicant

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**NOTICE OF OPPOSITION
PURSUANT TO 15 U.S.C SECTIONS 1063 AND 1125(c)**

In the matter of trademark Ser. No. **85430918** for the mark CASERA ("Applicant's Mark") for Chorizo, longaniza, deli meats, namely, hams, turkey ("Applicant's Goods") in International Class 029 which was published for opposition in the Official Gazette of July 24, 2012, the time to oppose having been extended, Opposer, Goya Foods Inc., a corporation organized and existing under the laws of the State of Delaware and located and doing business at 100 Seaview Drive, Secaucus, New Jersey 07094, believes that it will be damaged by the registration of the alleged mark shown in Application Serial No. 85506823 and opposes the application under the provisions of 15 U.S.C. §1063 (Trademark Act of 1946, Section 13) and 15 U.S.C. Section 1125(c).

As grounds of opposition, it is alleged that:

1. Opposer is the owner of the marks CASERITA and CASERA, (collectively "Opposer's Marks") as a trademarks applied to croquettes and processed vegetables respectively ("Opposer's Goods), the same being directed to directed to wholesale and retail consumers.

2. Opposer is now and for many years has been trading as and known by the Opposer's Marks identifying Opposer as the source of Opposer's Goods, the same being in part substantially identical to and generally related to Applicant's Goods.

3. Opposer is now and for many years prior to any date which may be claimed by Applicant, engaged in the use of Opposer's Mark on and in association with Opposer's Goods and is the owner of registrations therefor, including *inter alia*, those identified in paragraph 5 below.

4. Since long prior to any date which may be claimed by Applicant, Opposer has been and is now engaged in the use of Opposer's Marks on and in association with Opposer's goods and services in interstate commerce.

5. Opposer is the owner of, *inter alia*, the following U.S. trademark registrations, which is in good order, and in the name of and owned by Opposer:

MARK	REGISTRATION NO.	GOODS
*CASERA	2740494	Processed Vegetables (Class 29)
*CASERITA	3040516	Chicken Croquettes (Class 29)

*Designates incontestable registration.

6. Opposer's CASERA mark and name has been in continuous, open, and notorious use in the United States from 1979 to the present date.

7. Opposer's CASERA mark and name has been continuously and widely advertised and promoted in the United States from 1979 to the present.

8. Opposer's CASERITA mark and name has been in continuous, open, and notorious use in the United States from 1972 to the present date.

9. Opposer's CASERITA mark and name has been continuously and widely advertised and promoted in the United States from 1972 to the present.

10. As a result of long use, widespread advertising and promotion, and successful sales, advertising and promotion for over thirty years, Opposer's Marks have become distinctive and well-known and highly regarded throughout the United States, long prior to the date Applicant filed the application in issue and long prior to any date of use that may be claimed by Applicant.

11. As a result of the expenditure by Opposer of substantial sums in establishing, maintaining, and policing Opposer's Marks as symbols of Opposer, its quality products and services, the trade and purchasing public have come to recognize Opposer's Marks as distinctive of Opposer's quality products and services and as indicating the sole source of those products and services.

10. The use by Opposer of the Opposer's Marks for the Opposer's Goods alleged herein is long prior to any date which may be lawfully claimed by Applicant, and Opposer has priority.

11. Applicant's Mark is confusingly similar to Opposer's Marks.

12. Specifically, with regard to Opposer's CASERITA trademark, in the Spanish language, the term "Caserita" carries with it the suffix "-ita" such that it is the diminutive equivalent of Applicant's CASERA Mark.

13. The goods of Applicant and Opposer are substantially related in part and generally related in part, and Applicant's intended use of Applicant's Mark in connection with its goods is without the consent or permission of Opposer.

14. The goods of Applicant and Opposer are generally referred to as Latin or Hispanic type food goods and are often used conjointly.

15. Upon information and belief, Applicant intends to market its goods through the same channels of trade as utilized by Opposer for Opposer's goods.

16. Upon information and belief, Applicant intends to direct market its goods to the same ultimate consumer to whom Opposer directs Opposer's goods.

17. Since Opposer owns Opposer's Marks by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and its goodwill.

18. The registration of Applicant's Mark to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's Goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer, all to Opposer's irreparable damage.

19. Opposer believes that it is and will be damaged by registration of the mark applied for by Applicant.

WHEREFORE, Opposer prays that the application for registration of CASERA, Serial No. 85506823, filed on September 23, 2011, be denied and that this Opposition be sustained.

Respectfully submitted for Opposer
Goya Foods, Inc.

By: /s/ Stephen L. Baker
Stephen L. Baker
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November 21, 2012

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Notice of Opposition was forwarded by email and first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 21st day of November, 2012 to the attorney for the Applicant at the following address:

EMMA MADRID, Esq .
MARQUEZ BROTHERS INTERNATIONAL, INC.
5801 RUE FERRARI
SAN JOSE, CALIFORNIA 95138-1857



Ryan A. McGonigle